

military leases of USG property to foreign governments or international organizations (such as, North Atlantic Treaty Organization) under Chapter 6 of the Arms Export Control Act. This part establishes the responsibilities for evaluating lease requests, obtaining approvals, and negotiating and administering the lease agreements. This part applies to the Office of the Secretary of the Air Force, the Air Staff, Air Force Systems Command (AFSC), and Air Force Logistics Command (AFLC). This part requires coordination with the USAF operational commands, the Air Force Reserve, and the Air National Guard when their assets are under consideration for lease. It implements DOD Instructions 7230.7, January 29, 1985 (32 CFR part 288), and 7230.8, June 9, 1976.

### Subpart A—Policy and Responsibilities

#### § 863.1 Leasing policy.

10 U.S.C. 2667 provides the Secretary of the Air Force the authority to lease assets under the control of the USAF to nongovernment organizations. When the Secretary considers it advantageous for the United States, leases may be approved under such terms and conditions the Secretary considers will promote the national defense or be in the public interest. The statute provides that the property must be under the control of the department; not for the time needed for public use; and not excess property. Typically, the USAF does not lease assets which are otherwise available from commercial sources.

#### § 863.2 SAF/AQ responsibilities.

(a) The Secretary of the Air Force delegated the statutory authority to approve leases to the Assistant Secretary of the Air Force for Acquisition (SAF/AQ). Since final leasing authority rests at the secretariat level, field and staff elements must take care not to preempt or prejudice the Secretary's authority to determine whether a proposed lease is advantageous to the United States and what terms and conditions will be considered as promoting the national defense or being in the public interest.

(b) SAF/AQ determines whether a lease request from a nongovernment organization or from a command on behalf of a nongovernment organization meets the general guidelines of this part. Furthermore, SAF/AQ ensures that the Air Staff (HQ USAF/LE, PR, XO, CC), the Office of the Secretary of the Air Force (SAF/AC, PA, GC), Defense Security Assistance Agency (DSAA), and USAF operational commands, the Air Force Reserve, or Air National Guard when their assets are potential lease candidates have coordinated, as necessary, before recommending that SAF/AQ sign a Determination and Finding (D&F). This document designates which command, normally AFSC or AFLC, will negotiate and execute the lease agreement and outlines the basic terms and conditions which must be contained in the lease. SAF/AQ makes the determination if it is unclear whether AFSC or AFLC should assume a particular leasing action. The determination and finding format for authority to lease United States government property is shown below.

#### DETERMINATION AND FINDING FORMAT

The Department of the Air Force (USAF) proposes to lease aircraft to for a period. (Describe the details of the proposed lease activity.) As consideration for the lease, the lease will contain the following additional terms and conditions:

(1) The leased property shall not be transferred, encumbered, or used for other purposes without the written consent of the Secretary of the Air Force.

(2) The leased property shall be furnished "as is" without any warranty, express or implied, as to serviceability, fitness for use, or other matters.

(3) The lessee shall pay the United States Government (USG) all rent, costs, and charges associated with the use of the leased property while under lease according to 32 CFR part 288 and this Determination and Finding.

(4) The lessee shall maintain the leased property during the term of the lease in a safe and serviceable condition according to prescribed USAF standards or pay the full cost of any such maintenance accomplished by the USG.

(5) Support provided by the USG, if any, shall be on a noninterference, reimbursable basis, including use of support aircraft, equipment, and facilities. The availability of such support, and the computation of any associated charges or costs, will be according

to applicable Department of Defense directives and instructions and USAF regulations and manuals.

(6) The lessee shall be responsible for all costs relating to the leased property during the term of the lease including, without limitation, expenses of operation, maintenance, display, demonstration, ferrying, transportation, support, and protection.

(7) The lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract, except to the extent authorized under the Federal Acquisition Regulations.

*Optional (7)* Except as otherwise authorized under the Federal Acquisition Regulations, the lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract except for DOD contracts expressly requiring use of the leased property and then only to the extent that such costs are properly allocable to such contracts and reimbursable according to the terms thereof. Costs charged to the USG respecting the leased property under any such contracts will not exceed the lessee's costs under the lease.

(8) The lessee shall assume the risk of loss, damage, or destruction to the leased property. The risk will be covered by insurance on the depreciated value of the property or, with the USG's approval, the lessee may be self-insured.

(9) The lessee shall indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss and liability (whether in tort or contract) which might arise in connection with the lease because of: (a) Injury or death of personnel of the USG, the lessee, or third parties; and (b) damage to or destruction of property of the lessee or third parties, and leased property, support equipment, or other property of the USG. The lessee shall obtain insurance adequate to cover all such liabilities.

(10) The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition as when accepted, fair wear and tear expected. If the USAF determines that any of the leased property was not returned in such condition, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition.

*Optional (10)* The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition and configuration as when accepted, fair wear and tear expected. If the USAF determines that any of the leased property was not returned in such condition or configuration, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the

USAF for the cost of returning such property to its proper condition and pre-lease configuration.

(11) The lease may be revocable by the USAF at any time. The lease may be terminated by the lessee at any time upon 15 days prior written notice, subject to the lessee's residual responsibilities under the lease (to return leased property, to pay all costs resulting from the lease, to indemnify and hold harmless the USG, etc.).

(12) The lessee shall assume responsibility that may be imposed by other Government agencies for certification and registration of the leased property and for payment of any taxes or other charges thereon.

*Optional (13)* During the term of the lease, the lease status of the leased property may be interrupted from time to time by the USAF and the property made available for other USG activities under USG contracts with the lessee. During such periods, the property will revert to Government-Furnished Property status under the applicable USG contract. Any doubt as to the status of the leased property at any particular time will be resolved in favor of lease status.

*Optional (14)* The lessee shall secure necessary Defense Security Assistance Agency and State Department clearances prior to commencement of any demonstration or evaluation flights for representatives of foreign governments.

*Optional (15)* Orientation flights for United States Congressional and news media representatives and orientation and evaluation flights for foreign nationals shall be subject to approval according to Department of Defense Regulation 4515.13R.

*Optional (16)* The lessee planning to fly leased aircraft at the air show shall prepare an air show plan for the USAF's approval which provides information on: scheduled use of the leased property; qualifications and duties of lessee personnel attending the air show; intended and contingency flight profiles; provisions for ensuring adequate pre-flight crew rest and for ensuring proper pre-flight briefings and postflight debriefings; and provisions for obtaining a visual record, and flight data recorder coverage (if aircraft is so equipped) of practice and show flight demonstrations, and orientation flights. USG approval of, or involvement in, such plan shall not diminish the lessee's assumption of risk of loss and liability in connection with the lease.

Pursuant to title 10, United States Code, section 2667, I find that the property to be leased is under the control of the USAF; it is not excess property as defined by section 472 of title 40, United States Code; but it is not for the time needed for public use. I consider the above described lease of such property to be advantageous to the United States and such terms to be in the public interest.

The Commander, , or designee, is authorized to execute a lease according to this Determination and Finding.

#### **§ 863.3 AFSC responsibilities.**

AFSC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee desires to lease an asset being acquired or managed by a System Program Office (SPO), that SPO evaluates the lease request, makes its recommendation to HQ AFSC/PKC, and negotiates the lease agreement, if approved by SAF/AQ.

#### **§ 863.4 AFLC responsibilities.**

AFLC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee requests the lease of an asset managed by AFLC or an asset under the control of any of the USAF operational commands, the AFLC Air Logistics Center (ALC) most familiar with the asset evaluates the lease request and makes its recommendation to HQ AFLC/PM. The Wright-Patterson Contracting Center (WPCC) negotiates the lease agreement, if approved by SAF/AQ.

### **Subpart B—Basic Terms and Conditions**

#### **§ 863.5 Authorized uses.**

The lease agreement will specify what uses may be made of the leased property. The authorized uses of the leased property need not support a USG contract or requirement. The lease may limit or specify the location of lease performance.

#### **§ 863.6 Lease charges.**

(a) Lease charges are comprised of rent, reimbursement of any out of pocket expense to the USG, and other costs which the lessee must pay according to the terms of the lease. Pursuant to 32 CFR part 288, User Charges, rent must include charges for depreciation and interest on investment. These charges may be assessed on a daily, monthly, or yearly basis as determined appropriate by the contracting officer. For example, if the lease period is short term or if the leased property is being modified in such a way as to pre-

clude its return to the USAF for immediate use to satisfy a USG mission requirement, charge rent during the entire lease term. However, if the lease period is long term and lease activities are actually intermittent rather than continuous, charge rent only during those times the leased property is actually in use by the lessee or unavailable for USAF use.

(NOTE: Periods of use are defined in the lease.)

(b) It may be appropriate to assess flying-hour charges if an aircraft is leased. Flying hour charges can be assessed for depot maintenance, replenishment spares, base support, etc., depending on the leasing situation. If an operational aircraft is leased, payment of depot maintenance and replenishment spares charges would be in order. If the lessee is authorized under the lease to obtain spare parts from the supply system, the lessee should either pay the spares flying-hour charges or reimburse the USG the cost of the spare part plus the cost of providing it.

(c) Leases should include a charge for general and administrative expenses of the USG. The contracting officer should assess a charge of 10 percent of all other lease charges to recoup the USG's general and administrative expenses.

(d) SAF/ACCS sets depreciation, interest on investment, and flying-hour charges. When the specific item to be leased is identified, these rates may be based on supplemental information from the SPO or ALC as to the property's acquisition cost, replacement cost, age, major modifications, salvage value, etc. When the specific item is not identified or actual costs are unknown, use reasonable estimates. The contracting officer is authorized to communicate directly with SAF/ACCS in determining rental charges. Also assess rent for pieces of support equipment which the lessee may require to support the major items of leased property. In such cases, SAF/ACCS may recommend the use of the rates set forth in the Use and Charges clause in the Federal Acquisition Regulation for rental computation.